

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

**PETITION FOR PARTIAL RECONSIDERATION OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL, INC.**

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SUMMARY

Lifeline support for payphone line service is consistent with Section 254. It will preserve service to millions of Lifeline eligible users otherwise without service even after the Commission's reforms. The Commission should reconsider its bases for not granting relief. Denying Lifeline support means many fewer payphones, if not their total disappearance, along with benefits now realized by low income users.

Contrary to the Commission's statement that without reduced call rates, Lifeline support for payphones doesn't benefit low income users, payphones do provide substantial benefits to low income consumers. They make available to end users free 911, free TRS, and free to the caller 8xx calling; they are available without advance sign up or obtaining equipment and are deployed without any revenue assurance. Trying to pass on Lifeline support by reducing rates on calls wouldn't result in meaningful rate reductions or affect the affordability of payphone service for the low income users of payphones. But Lifeline support is the difference between whether payphones are there for low income users who depend on them for hundreds of millions of calls.

The FCC also misses the point when it says Lifeline is supposed to provide service to low income people in their homes. For the almost half the Lifeline eligible people who won't get home service under the Commission's program, the choice is payphone service or no service at all. Yet the FCC did not even discuss the impact on payphones and their users of its decision.

The FCC relied on a 2002 ruling that payphones don't meet one of several statutory criteria considered in deciding to provide support: that a majority of "residential customers" don't subscribe to the service. However, while all the criteria must be considered, not all must be met, and the FCC itself hasn't applied the residential subscriber criterion to mobile service providers. Payphones fully meet the other specific statutory criteria.

Other non-statutory factors relied upon to deny support in 2002 are no longer relevant. Moreover, in 2002, most payphones were owned by ILECs already receiving significant universal service funds; Lifeline support would have provided more. Large LECs have left the payphone business; small independent PSPs now provide almost all payphones and PSPs are the *only* providers of services to low income consumers that do not get some support.

In this regard, “competitive neutrality” is a bedrock principle of universal service, but the Order leaves in place this decidedly competitively “unneutral” situation and compounds it. The FCC on its own forbore from applying the facilities requirement of the Act to Lifeline-only providers and loosened requirements applicable to them. The FCC did not raise the possibility of similar dispensations to PSPs. The FCC now states that its focus is on broadband and that it doesn’t want to use resources on a payphone rulemaking. But the wireless Lifeline programs also relate to delivering voice services, not implementation of broadband.

While Section 276 does not “compel” the FCC to provide universal service support to payphones, the Commission cannot ignore that its current policies are not effectuating the Commission’s Section 276 duty to encourage the deployment of payphones and that the Commission could help meet its responsibilities by providing support for payphone services. The statutory mandate compels the Commission to assess the impact of its actions on payphone deployment and on the availability of payphones.

Implementing Lifeline support for payphone lines would cost about \$48 million a year, a small fraction of the amounts projected to be spent supporting wireless services. This is a reasonable sum to spend given that payphones will be the last vestige of service for roughly half the eligible Lifeline recipients. Moreover, in many circumstances payphones can far more efficiently provide service to low income consumers than does providing individual phones.

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**PETITION FOR PARTIAL RECONSIDERATION OF
AMERICAN PUBLIC COMMUNICATIONS COUNCIL, INC.**

The American Public Communications Council, Inc., (“APCC”) hereby petitions for reconsideration of that portion of the Commission’s Report and Order, (“*Lifeline Order*”) ¹ in the above referenced matter that denied the Petition for Rulemaking, filed by APCC, that sought Lifeline support for payphone line service (“*Payphone Line Support Rulemaking Petition*”) ² and that portion of the Commission’s Report and Order in the above referenced matter that denied the request for interim relief (“*Emergency Interim Relief Petition*”),³ also filed by APCC, that sought Lifeline support for payphone line service pending action on the *Payphone Line Support*

¹ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Lifeline and Link Up*, WC Docket No. 03-109, *Federal-State Joint Board on Universal Service*, WC Docket No. 96-45, *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23, FCC 12-11 (Adopted January 31, 2012, Released February 6, 2012). The portion of the Report and Order for which APCC seeks reconsideration is contained in the slip opinion at 166-67, Section XII, ¶¶ 392-398.

² *Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service* filed December 6, 2010.

³ *Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones*, filed December 6, 2010.

Rulemaking Petition. (The *Payphone Line Support Rulemaking Petition* and the *Emergency Interim Relief Petition* are together referred to as the “APCC Petitions.”)

I. SUMMARY OF PROCEDURAL HISTORY AND APCC SUBMISSIONS

The *Payphone Line Support Rulemaking Petition* and the *Interim Relief Petition* were filed on December 6, 2010. The *Payphone Line Support Rulemaking Petition* explained that payphones are the ultimate form of universal service —an always on, on demand reliable high-quality dial-tone service, available twenty-four hours a day, seven days a week, 365 days a year with no advance sign up. It described in detail why, even with the Commission’s program for providing Lifeline support for mobile wireless service, payphones are still a vital safety net for many users and will remain the only service available for many users. As the *Payphone Line Support Rulemaking Petition* detailed, and as the Commission itself has since acknowledged, funding and outreach limitations will mean all qualifying low-income consumers will not be provided with Lifeline mobile wireless phones.⁴ For those left without a mobile wireless phone, there is no service. Payphones remain their only means of access to the network —broadband or traditional public switched telephone network.⁵ But payphone deployment is on a precipitous downward trajectory and payphones are in danger of disappearing.⁶

A Public Notice⁷ requesting comments and reply comments on the *APCC Petitions* was issued and comments and reply comments were duly filed. In its reply comments,⁸ APCC

⁴ *Lifeline Order* at ¶¶ 357-358, and accompanying footnotes. See also Note 25, *infra*, and accompanying text.

⁵ See, e.g. *Payphone Line Support Rulemaking Petition* at 11-17.

⁶ See, e.g., *Payphone Line Support Rulemaking Petition* at 8-11, *Emergency Interim Relief Petition* at 1-2, 5-6.

⁷ *Wireline Competition Bureau Seeks Comment on American Public Communications Council Petitions Regarding Universal Service and Payphone Issues*, CC Dkt. No. 96-45; WC Dkt. No. 03-109, Public Notice (DA 10-2630, Issued December 16, 2010).

reiterated many of the points already made in the *APCC Petitions*. APCC addressed arguments regarding the Commission's authority, including arguments regarding the Commission's authority to adopt Lifeline support for payphones.⁹ It is unquestionable that payphones now overwhelmingly serve low income consumers.¹⁰ APCC made clear that while APCC is not seeking curtailment or limitations in the support the Commission was providing to other services, including mobile wireless services, the Commission must consider that payphones could be a more efficient means of providing service to low income consumers than providing services to individuals.¹¹ Moreover, the Commission had to consider the impact on the payphone industry, particularly the competitive impact and the impact on payphone deployment, of the Commission's Lifeline support of other services, particularly mobile wireless services.¹²

Subsequently, the Commission issued the Notice of Proposed Rulemaking in *Lifeline and Link Up Reform and Modernization*.¹³ APCC again stated that while APCC was not seeking to curtail or limit support for other services,¹⁴ "the Commission must consider the merit of and

⁸ Reply Comments of the American Public Communications Council (filed February 2, 2011) (hereafter "*APCC PN Reply Comments*").

⁹ *Id.* 2-4. Indeed APCC specifically addressed the same points cited by the Commission in denying the *APCC Petitions*, referring to the discussion in the *Payphone Line Support Rulemaking Petition*.

¹⁰ *Id.* 7-8.

¹¹ *Id.* 6-7, again referring to fuller discussions contained in the *APCC Petitions*.

¹² *Id.* 4-5, 22-23; *APCC PN Reply Comments*, at 8-9..

¹³ *Lifeline and Link Up Reform and Modernization*, FCC Dkt. No. 11-42, et. al, Notice of Proposed Rulemaking, FCC 11-32 (Released March 4, 2011).

¹⁴ While parts of this Reconsideration Petition discuss the adverse impact on payphone deployment and the Commission's failure to address the adverse impact on payphones of the differences between the Commission's actions with regard to wireless mobile services and payphone services, APCC is not seeking any change in the Commission's actions with regard to support for wireless services. Rather APCC's objective is to obtain fair and nondiscriminatory treatment for payphone line service so as to ensure that low income consumers who must rely on payphones also have some services available to them.

weigh the efficiencies and other benefits of Lifeline support for payphone lines as compared to Lifeline support for mobile wireless and other forms of service.” APCC requested that the Commission act on the *Emergency Petition* in the event it had not acted on the *Payphone Line Support Rulemaking Petition* by the time it acted in *Lifeline and Link Up Reform and Modernization*.¹⁵ In its reply comments, APCC pointed out again that USF support for payphone line service should be a component of Lifeline and that support for payphone line service is consistent with and furthers the Commission’s efforts for Lifeline reform, and APCC again requested that the Commission grant the *Interim Relief Petition* as part of its action in the instant proceeding.¹⁶

The Commission denied the *APCC Petitions*. The rationale advanced by the Commission’s decision is discussed below as we discuss the grounds for reconsideration.

II. ARGUMENT

A. Lifeline Support for Payphone Line Service Is Consistent With Section 254

In the *Lifeline Order*, the Commission “question[ed] whether” support for payphone line service “is consistent with Section 254.”¹⁷ Significantly, while advancing several considerations, the Commission did not make a determination that the relief requested is inconsistent with Section 254.

1. Pass through of Lifeline Support

¹⁵ Comments of the American Public Communications Council, Inc., at 5 (filed April 21, 2011 (hereafter “*APCC 11-42 Comments*”). At the time the Commission issued its Public Notice requesting comments and reply comments on the *APCC Petitions*, see note 7, *supra*, the Commission had not yet initiated *Lifeline and Link Up Reform and Modernization* and the *APCC Petitions* were assigned to WC Docket No. 03-109 and WC Docket No. 96-45.

¹⁶ Reply Comments of the American Public Communications Council, Inc. (filed May 10, 2011) (hereafter “*APCC 11-42 Reply Comments*”).

¹⁷ *Lifeline Order* at ¶395.

One basis for questioning whether support for payphone line service is consistent with Section 254 was the Commission's concern that under the proposal as advanced by APCC there would be no obligation for the PSP to pass through to consumers in the form of reduced rates for calling the amount of the Lifeline support. From this, the Commission reasons that there is no benefit to low income consumers, and the Lifeline support provided for payphone line service is a "windfall to payphone service providers" ("PSP"s).

Before turning to a specific response to this point, three observations are in order. First, there is no payment to PSPs under the relief APCC and PSPs seek. As in all other universal service programs, payment would be to the serving ETC. The PSP would see a reduction in the charges imposed by the serving ETC. Second, there is virtually no question but that at this point in time, the services provided by payphones are provided overwhelmingly if not exclusively to low income users.¹⁸ Thus Lifeline support for payphones would be reaching the class of users

¹⁸ As APCC explained in the *APCC PN Reply Comments*, at 7-8 (footnote omitted), some comments in that proceeding

raise the bogeymen of a payphone in expensive malls and payphones in "prestigious social clubs." By definition and by the logic of the comments that raise these very arguments, upper and middle class shoppers and clients who frequent these premises *will not* be the ones using the payphones there, if there is a payphone there. Those shoppers and clients will be using their mobile phones. The users of the payphones will be the patrons who otherwise are without mobile service—either for temporary reasons (like battery failure) or because they cannot afford service—and the low income workers who provide the services to those shoppers and who are the low income people at whom universal service is directed. It is the line cook at the "prestigious social club" being paid minimum wage who will use the payphone on her break to check in with her husband or the domestic worker who is stuck at the bus stop in Bethesda, MD who will be using those phones to get word to the child care center. Similarly, it is the relatively low income traveler at the airport who can't afford mobile service who will be using those payphones but who will have no means of communicating when those phone booths are replaced with charging stations [for mobile phones], as even casual observation makes clear is happening.

for whom Lifeline support is targeted.¹⁹ Third, the number of payphones in service has been on a dramatic downward trajectory. This trend is discussed in greater detail in the *APCC Petitions*.²⁰ For present purposes it is sufficient to note that since 1997, the year after the 1996 Act, the number of payphones has gone from an estimated 2.2 million to less than 475,000 at the time the *APCC Petitions* were filed in December, 2010. Since then, APCC estimates that the number of payphones in service has fallen to about 400,000 units.

Turning to the Commission's analysis, it ignores entirely the contribution payphones already make to universal service and the benefits low income consumers receive from payphone deployment. Payphones are the epitome of universal service. Payphones are deployed and made available at no cost. Payphone service is "always on." It is an on demand reliable high-quality dial-tone service, available twenty-four hours a day, seven days a week, 365/6 days a year. *Unlike every other form of communication available to the public*, users are not required to make an initial investment in equipment, await activation of the service or pay recurring monthly charges. Users can call anywhere at any time. Users have the option of paying for calls with coins or by use of calling cards, prepaid cards or other access code arrangements. Users can also place calls to 800/toll free subscribers at no charge to the caller.²¹ And of course, full 911 service and TRS calling are also available free of charge twenty-four hours a day, seven days a

¹⁹ The one possible exception is that in times of national emergencies, crises, or disaster, payphones have proven to be more robust than mobile wireless lines. For example, there are repeated instances of payphones being the only means of communication after 9/11, during power failures, in much of the area affected by hurricane Katrina, etc. While not immediately relevant to universal service, the fact that payphones can be the only line of communication in times of emergencies should be of interest to the Commission.

²⁰ See, e.g., *Payphone Line Support Rulemaking Petition* at 8-11, *Emergency Interim Relief Petition* at 1-2, 5-6.

²¹ There is more than anecdotal evidence that this service in itself is an enormous advantage for low income users who make extensive use of payphones to call the toll free numbers often available to reach social service agencies, such as food stamp agencies, employment agencies, drug hot lines, etc. The long hold times that are sometimes associated with these services make it impractical to use Lifeline supported wireless phones for these calls since doing so will rapidly diminish the allotment of minutes.

week across the nation's public payphone base. No other service provider except PSPs, and certainly not providers of wireless mobile, makes available or deploys such a service—much less for free—with no assurance of any recovery and at no cost to any end user. It is those who are without service at all—low income consumers—who are most in need of the availability of these services.

Thus the Commission is wrong when it says there are no benefits passed through to low income consumers. There will be fewer payphones, if they do not disappear altogether in the absence of relief, and these benefits to low income consumers will be lost. The Commission's primary policy concern—that "Lifeline is intended to benefit eligible low-income consumers, not service providers,"²²—is vindicated. Yet the Commission did not analyze at all what the reduction in the availability of payphones—if not their total disappearance—that will occur as a result of the Commission's decision—will mean for low income consumers.

Moreover the Commission's analysis misses the critical role Lifeline support for payphones is designed to serve. Lifeline support for payphones is designed to preserve the availability of payphone service which, as discussed above, is in many cases the only service that is available for low income users. Payphones are in danger of, and indeed are, disappearing entirely, as discussed above. As explained at length in the *Payphone Line Support Rulemaking Petition*, payphone service is a marginally profitable business. In the absence of Lifeline support, payphones will disappear. The issue here is not service at a reduced rate to low income

²² *Lifeline Order* at ¶396. We note also that Lifeline support often benefits service providers as well as the ostensible targets of the benefits, low income consumers. For example, the mobile wireless carriers to whom the Commission has granted waivers and for whom the Commission forbore from applying the full requirements of the Act have used the Lifeline support as a means of entry to a new market that is highly profitable for them and receive substantial additional revenue aside from the basic Lifeline service revenue they receive from the Commission. The fact that service providers may also realize some collateral benefit from universal service support has not inhibited the Commission from providing such support so long as the primary purpose of universal support—providing service to low income consumers who otherwise would not have access to service—is achieved. *See text following this note.*

people who rely on payphones; the issue is whether low income people will have any service at all available. The Lifeline support is the difference between a payphone being able to remain in service and its being removed from service.

On the other hand, trying to pass on the reductions to consumers is not likely to lead to any change in the affordability of payphone service for low income consumers. The 400,000 payphones in service are believed to process somewhere between 750 million and a billion calls on an annual basis, or, using the lower end of the estimate of the number of calls, on average somewhere around 150 calls per month each. If the Commission's proposed support rate of \$9.25 a month were spread across the calling base, it would mean a reduction in the price of a call from the current prevailing rate of \$.50 to about \$.45. If the calls are spread among 35 users or so of the payphone, that is a reduction in the cost of the service to each user from \$2.00/month to on average about \$1.80/month, a savings of \$.20, or twenty cents, a month per user. While of course every cent is valuable to low income consumers, the twenty cent savings—even if doubled—is not likely to be an amount for even low income users that will affect the affordability of the service.²³ Thus while, on the one hand, Lifeline support that is not passed on can be the difference between a payphone's being sufficiently economically viable so it remains in place and is there to use and, on the other hand, there being no service at all, passing on the support does not affect in any meaningful way the affordability of the service but can mean the disappearance of the service.²⁴

²³ Of course, if the higher end of the estimate of the number of calls were used, or if the number of users of the payphone goes up, the savings per consumer goes down, and there is even less impact on the affordability of the service.

²⁴ Moreover, attempting to pass on the savings is not likely to work in many instances. At the moment, users typically deposit two quarters to make a call. Payphones do not have the ability to return change. While some consumers may have the correct change for a \$.45 call, and/or be willing to carry and use three coins instead of two to make a phone call, and/or may be willing to—and have available to them at the time of the call someplace to-- get

The choice the Commission must make here is between some affordable service for those low income consumers who for whatever reason –the failure of outreach programs to reach them, budget constraints on the program, etc.—do not end up participating in the mobile wireless phone program and the disappearance of the last vestige of access to the network for these low income users.

2. Affordable Service Versus No Service

With regard to the last point in the previous paragraph, the choice between some service for these low income users and no service at all, there are several related points

The Commission also was concerned that Lifeline support for payphones was “inconsistent with [its] longstanding commitment to ensure that low income consumers have access to phone service in their homes.” There is no question but that providing service to all low income users in their home is a worthy objective. But that ideal is, at least at the moment, not within reach. If the choice were between providing low income consumers with service in their homes and payphone service, the Commission might well decide to provide service in the home. But this posits a false choice. Given that the Commission is not now and will not in the future be in a position to give all low income consumers service in their homes and that roughly half those people eligible for Lifeline support will not have service in their homes,²⁵ the choice is rather between payphone service and no service. *It is consistent* with the Commission’s

the correct change, many will not. Thus many consumers will not realize the savings even if PSPs could attempt to pass it on without threatening the economic viability of the service.

²⁵ After taking account of the reforms adopted by the Commission, including increased outreach, changes in eligibility guidelines, and reforms to eliminate duplication, ineligibles, and other abuses, the take rate for Lifeline support at the end of the next three years will be at 51%. *Lifeline Order*, at ¶¶ 357 et. seq. and accompanying footnotes. Thus about half the eligible Lifeline recipients will still be without service.

universal service goals to strive to make at least some service available to low income consumers—even if it cannot be a personal mobile wireless phone or a phone in their home.

In a related vein, as APCC pointed out, in a variety of circumstances, payphones are a potentially far more efficient and economical vehicle for providing some service to a large number of low income consumers than is the Commission's current program supporting mobile wireless service. If only a small volume of traffic, just a few calls, is diverted from a marginal payphone because one or two users of that payphone obtain Lifeline supported mobile handsets and no longer use the payphone, and the result is that the payphone is removed, while the recipients of the Lifeline supported mobile sets may have an improvement in the level of service they receive, dozens of users of that payphone are now totally without any service.²⁶ Clearly a single Lifeline support payment for the payphone line service would be far more economical than attempting to provide the dozens of people who formerly used the payphone with mobile phones or service in their homes.

Payphones play an important back-up and complementary role even for those who have Lifeline-supported mobile phones. Lifeline supported mobile phones generally come with a predetermined number of minutes beyond which per minute charges apply, often at high rates. Payphones that generally provide unlimited local calling for a fixed rate and extremely

²⁶ See, e.g., *Payphone Line Support Rulemaking Petition* at 20-22. If a typical payphone at the margin generates sufficient revenue to be viable with 120 calls a month and serves 35 callers making 3 calls/month, and 15 callers making one call/month, and 3 of the callers accounting for 7 calls/month obtain Lifeline supported mobile phones, the payphone is no longer economically viable and will be removed, leaving the remaining 47 payphone customers with no service. The numbers used here are for illustrative purposes. See Note 23, *supra*, and accompanying discussion in text.

competitive toll rates can be a much more economical calling option for many calls, either to conserve minutes or to make calls once the minute limitations are reached.²⁷

Moreover, just as the Commission has recognized the importance, significant benefits, and economic efficiencies of making broadband internet access available to large segments of the population through publicly available “anchor” facilities as an important supplement and back up for home subscriptions, so too for payphones. Indeed as part of the broadband stimulus program, the federal government is funding creation of public computing centers. Payphones are an equally important part of a plan to make Lifeline available to low income users

3. Residential Customers

Another consideration advanced by the Commission was that the Commission “must define services eligible for universal service based in part on a determination that the services have ‘through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers’” and payphones do not meet this criterion. The Commission observed that the Joint Board had, in 2002, rejected a similar proposal for Lifeline support for payphone line service, “in part” on the basis that payphones do not meet this criterion. The Commission, relying on the same factors set forth by the Joint Board, had agreed with the Joint Board.²⁸

²⁷ Also, as discussed above toll free calling is free to the caller at payphones. Many calls to toll free numbers by low income users are to service agencies providing support services and can have long hold times. Payphones are an important complement to mobile service; the payphones provide a much less expensive way to make calls that otherwise would exhaust the minutes or cause the user to incur extra charges on a Lifeline supported mobile phone. See Note 21, *supra*, and accompanying text.

²⁸ *Lifeline Order* at ¶397.

There are several points to be noted here. As stated in the *Payphone Line Support Rulemaking Petition*,²⁹ there is no requirement that all of the enumerated four criteria listed in Section 254(c)(1) must be met. Rather, the Commission “shall consider the extent to which” each is met. The Commission is free to find that a service meeting all the other criteria should be supported despite its failure to meet one of the criteria, so long as the Commission has “considered” all of the criteria in its determination.³⁰ Neither any party nor the Commission has questioned whether payphone line service meets the other criteria contained in Section 254(c)(1). Indeed, in its earlier decision the Joint Board found that payphone line service did meet the other specific criteria enumerated in Section 254.³¹ The Commission made no finding that payphones were legally required to meet the residential customer requirement. But the Commission did not engage in the process of weighing the Section 254(c)(1) criteria; it simply disqualified payphone line service based on its failure to meet the “residential customer” requirement.

Moreover, although the Commission has found that mobile services are eligible for Lifeline support, there been no finding that mobile services “have ‘through the operation of market choices by customers, been subscribed to by a substantial majority of residential customers.’” While the ubiquity of mobile service users is evident, it is not at all clear wireless mobile services are subscribed to by a majority of “residential customers.” The Commission

²⁹ *Payphone Line Support Rulemaking Petition* at 23-24. See also, *id.* at 31-32, explaining why payphone line service does meet the Section 254 criteria.

³⁰ *APCC PN Reply Comments* at 3-4,

³¹ *Federal-State Joint Board on Universal Service*, See 17 FCC Rcd 14095, 14114 (2002). Based on a weighing of other factors and additional considerations advanced by the Joint Board, the Board concluded that universal service support was not warranted *at the time* under the general public interest criterion of Section 254(c)(1)(d). As we discuss in the text below, the *Payphone Line Support Rulemaking Petition* addressed why the factors relied upon by the Joint Board are no longer relevant but the Commission analyzed neither those other factors nor APCC’s arguments about why they were no longer applicable.

stated that 30% of adults live in households with mobile wireless service only.³² CTIA reports that as of June, 2011, 31% of households were wireless only.³³ Any mobile subscriber who retains a residential land line has not subscribed to mobile service as a “residential customer.” Thus, that leaves 69% of households as “residential customers” of wireline carriers or other providers.³⁴ After some research, APCC was unable to locate data that would support the conclusion that mobile services meet this statutory criterion. Thus, the Commission has already at least implicitly recognized that satisfying all the enumerated criteria –and particularly the residential customer requirement-- in Section 254(c)(1) is not required. Yet the Commission considered none of the other statutory criteria in rejecting the *APCC Petitions*.

Nor did the Commission examine the other factors relied upon by both the Commission and the Joint Board in reaching their conclusions in 2002 not to provide support for payphone line service. Both the Commission and the Joint Board relied on a number of considerations not directly covered by the statutory criteria. As the Commission stated, the Joint Board’s 2002 determination and the Commission’s affirmance of the Joint Board relied only “in part” on the failure to meet the “residential customer” criteria.

The environment has changed radically since 2002. One example is that at the time of 2002 ruling, the majority of payphones were provided by ILECs, who were already recipients of substantial amounts of universal service funds, and Lifeline support would have provided

³² *Lifeline Order* at ¶21.

³³ U.S. Wireless Quick Facts, <http://www.ctia.org/advocacy/research/index.cfm/aid/10323> (last viewed March 12, 2012).

³⁴ Moreover, while precise data is not available, many subscribers to mobile services, undoubtedly including some of the subscribers in some wireless only households, subscribe as part of a company or other kind of affinity group subscriber, or use mobile service provided by their employer or business. Thus some of those wireless only households have not made a “market choice” to subscribe to wireless services as a “residential customer”, further eroding the possibility that wireless mobile service meets the standard to which the Commission held payphone service.

additional support to them. Today, all of the large LECs have left the payphone business and it is small independent providers who are not currently recipients of any universal service funds who provide virtually all payphones. In the *Payphone Line Support Rulemaking Petition*³⁵ and the various comments filed by APCC,³⁶ each of the other factors relied upon by the Commission and the Joint Board in the earlier determination was discussed and analyzed, and it was explained why, because of changed facts or other developments, each of the factors was irrelevant or otherwise not applicable in the context of the current requests.³⁷ In denying the *APCC Petitions*, the Commission discussed none of these changed circumstances and the need to adjust its analysis to address them.³⁸

B. Lifeline Support for Payphones Is Consistent With The Commission's Policy Directions.

The Commission stated that it did not believe that it should devote resources to exploring whether Lifeline support should be provided to payphones when its current focus is on reforming the program to protect it against waste, fraud and abuse and focus the program to include broadband.³⁹ But granting the relief sought in the *APCC Petitions* is consistent with the

³⁵ *Payphone Line Support Rulemaking Petition* at 23-27.

³⁶ See, e.g., *APCC PN Reply Comments* at 2-3.

³⁷ For example, both the Joint Board and the Commission expressed concern that the number of ETCs eligible for USF support would decline because ETCs, which at the time were mostly CLECs and perhaps a handful of CMRS carriers, might not offer payphone service. But as APCC pointed out, it is a simple task for ETCs to meet this requirement. In fact CMRS carriers largely already meet it, particularly in the current "call anywhere minutes" environment. Moreover, given the Commission requirements for payphone lines, to the extent waivers to provide the service are not readily available (as they are under Commission rulings), CLECs can also easily comply. *Payphone Line Support Rulemaking Petition* at 24-26. In any event with the decline in the number of CLECs and the increase in the number of CMRS carriers offering Lifeline service, the concern expressed by the Joint Board and the Commission is no longer relevant. Yet in denying the *APCC Petitions*, the Commission did not even discuss its reliance on these factors in its earlier ruling; it simply relied on the earlier ruling.

³⁸ Compare, e.g., *Lifeline Order* at ¶49, where the Commission recognized the need to conduct its analysis and develop its rules in light of changed circumstances and changing market conditions.

³⁹ *Lifeline Order* at ¶395.

Commission's continuing emphasis on the importance of voice services and is an efficient use of Lifeline resources with no real potential for abusive practices.

Although the Commission has embarked on a path to make broadband ubiquitously available and to refocus the universal service program on support for broadband,⁴⁰ the Commission continues to require ETCs to provide voice service in addition to broadband services.⁴¹ The Commission recognized that voice service is the basis for the Commission's authority to embark on the broadband path.⁴² The importance of voice services is a dominant theme through all the Commission's reforms. At the same time that the Commission observed that all consumers benefit from widespread subscribership to voice and broadband services, the Commission specifically went on to observe that "Moreover, voice services remain a prerequisite for full participation in our economy and society."⁴³ Indeed while being mindful of voice service being offered as an application over broadband service, the Commission nonetheless adopted separate goals for voice and broadband services, and the very first goal adopted is to "Ensure the Availability of Voice Services To All Low Income Americans."⁴⁴

But the Commission exhibited a strangely dichotomous attitude in implementing its commitment to make voice services available to all Americans. At the same time as the Commission stated that its focus was on using Lifeline to support broadband, the Commission, *on its own motion*, granted a blanket forbearance from application of the facilities requirement of

⁴⁰ See generally, *Connect America Fund*, __ FCC Rcd __, FCC 11-161 (Released November 18, 2011).

⁴¹ *Id.*, __ FCC Rcd __, FCC 11-161 ¶¶ 76-85.

⁴² *Id.* __ FCC Rcd __, FCC 11-161, ¶¶ 61-65.

⁴³ *Lifeline Order* at ¶ 17. See also, *id.* at ¶ 3 (Commission savings will still allow "service to consumers who remain disconnected from the voice networks . . .").

⁴⁴ *Id.* at ¶¶ 26-27.

Section 214(e)(1)(a) in order to facilitate entry by more Lifeline-only mobile wireless providers to provide voice service.⁴⁵ The Commission also eliminated requirements that most Lifeline-only providers who provide voice only services would not satisfy.⁴⁶ The wireless services which are currently provided to qualified consumers provide minutes of voice use, not broadband access.⁴⁷ These Lifeline-only providers have little to do with the Commission's implementation of its broadband plan. Their relevance here is as voice Lifeline providers to low income consumers. Thus the Commission has not only already devoted a significant effort to addressing the voice needs of low income consumers with virtually no impact on its efforts to apply Lifeline to broadband, but it has pledged significant resources to these efforts with Lifeline-only wireless voice providers into the future.

On the other hand, at the same time as the Commission embarked on a program that will expand its existing programs of providing Lifeline service with wireless voice services, the Commission was unwilling because of the Commission's broadband focus to devote any resources to examining payphone line service support.⁴⁸ The Commission did not discuss and expressed no concern with how the removal of payphones would affect the availability of voice service to low income consumers. It certainly did not consider any steps to make additional payphones available to provide additional services, as it had done in the case of voice wireless

⁴⁵ *Lifeline Order* at ¶368.

⁴⁶ See, e.g., *Lifeline Order* at ¶ 386, eliminating the requirement under Section 54.202 of the Commission's rules that Lifeline-only applicants submit a network improvement plan. The Commission recognized that the g majority of Lifeline-only ETCs are not facilities based at all. *Lifeline Order* at n. 1208.

⁴⁷ Whatever broadband capability may be available on the network of the ETC is not available to Lifeline consumers as part of the Lifeline service. The Commission did in the *Lifeline Order* allow Lifeline support to be applied to services that offer broadband capability but the broadband capability is not part of the Lifeline service.

⁴⁸ This aspect of the disparate and discriminatory treatment of payphone service and wireless service must also be considered in light of the discussion in the text below (see *Section D(1)*) of the Commission's failure to treat payphone line service in a competitively neutral manner.

services. It looked for no work-arounds to or dispensations from impediments to expanded voice services using payphones as it has done with wireless mobile. The Commission did not explain why the extraordinary efforts were warranted for wireless but no resources were worth expending to even examine the role of payphones in providing voice services to low income consumers. Given the Commission's continuing emphasis on voice services, the Commission surely needs to examine the role of payphones in delivering that service to low income consumers who otherwise will not have access to any service.

Moreover, while many of the reforms adopted by the Commission may help eliminate waste, fraud and abuse generally, no small number of the issues the Commission had to address are unique to or are exacerbated by the challenges of bringing the benefits of Lifeline supported wireless services to low income consumers.⁴⁹ By contrast, as explained in the *Payphone Line Support Rulemaking Petition*, there are virtually no such problems associated with payphone line support.⁵⁰ The Lifeline support the payphone line service would receive is less than the PSP's monthly dial tone cost paid to the ETC. In addition, there are costs of maintaining and servicing a phone in place. Thus unlike in the case of wireless mobile service, there is no incentive either

⁴⁹ For example, the issue of minimum charges for what is otherwise a service free to end users is unique to wireless services. In a related vein, non-usage is a problem heightened by the presence of mobile wireless services.

⁵⁰ See *Payphone Line Support Rulemaking Petition* at n.62 and accompanying text.

We note that the Commission noted its concern that the support requested by APCC would apply to all payphones, including those that might not otherwise meet the definition of a "public interest phone" as discussed in the legislative history of Section 276. *Lifeline Order* at n.1026. As a general matter, the issue of whether the limitations on public interest phones should be applicable to any program of support for payphone line service is precisely the kind of issue it is appropriate to address in a rulemaking proceeding, not the kind of issue warranting summary disposition without any exploration. The issue of limiting principles for rules is generally thrashed out in a rulemaking, not as part of the agency action rejecting a rulemaking proceeding, and APCC will welcome that discussion.

More specifically, we note that in the marketplace, the phenomenon of payphones side by side, or banks of payphones, is overwhelmingly a phenomenon of the past. There are extremely few areas where there is enough traffic to warrant more than a single payphone. Largely for historical reasons or reasons having to do with the relation with the premises owner, there remain a relatively few locations where there is more than one payphone in proximity to another.

to place payphones or maintain them in place just for the purpose of getting Lifeline support. Thus payphone line support will not divert the Commission's efforts to eliminate any abusive practices.

C. Lifeline Support for Payphone Line Service Is An Efficient Way to Provide Support For Low Income Consumers and a Wise Expenditure of Universal Service Funds

As explained in the *Payphone Line Support Rulemaking Petition*⁵¹ and mentioned above,⁵² there are a variety of situations where it will be more efficient to provide service to low income consumers with payphones than with mobile wireless service, as when a marginal payphone is taken out of service because of the decreased usage resulting when a handful of users of that payphone receive Lifeline supported wireless services –leaving all the former users of the payphone with no service at all. Moreover, as explained above, the Commission anticipates that even with its enhanced outreach programs adopted in the *Lifeline Order*, barely more than half the qualified households will be reached by Lifeline supported services,⁵³ leaving about half the qualified users with no service at all except the services provided by payphones.

The annual cost of providing all the remaining payphones, 400,000, with the Commission's proposed Lifeline support of \$9.25/month is \$48,000,000. The Commission expects to spend \$2,100,000,000.00 on Lifeline support in 2014, and more in the intervening years while at the same time saving funds from the levels projected under current practices.⁵⁴ The additional expenditure of \$48,000,000 to make available some service to the 49% of the

⁵¹ E.g., *Payphone Line Support Rulemaking Petition* at 20-22

⁵² See Section A (2), *supra*.

⁵³ See Section A (2) and note 25, *supra*.

⁵⁴ *Lifeline Order* at ¶ 357 and accompanying footnotes. Similarly, the Commission expects to save over \$2,000,000,000 in the three year period. *Id.*

qualified households who will otherwise have no service at all available to them and receive no benefit from the Commission's universal support program is more than warranted.⁵⁵

D. The Commission's Implementation of Section 254 With Regard to Payphones Failed to Address the Statutory Requirements, Particularly When Considered With Other Statutory Mandates. These Concerns Dictate Support for Payphone Line Service

1. The Commission's Uneven Implementation of Section 254

The *Payphone Line Support Rulemaking Petition* and related pleadings⁵⁶ raised both the issue of the lack of competitive neutrality and the issue of the lack of technological neutrality in the Commission's implementation of Section 254.⁵⁷ APCC explained that competitive and technological neutrality required the Commission to match its support of mobile wireless phones with support for payphones. The *Payphone Line Support Rulemaking Petition* explicitly explained the disparate, anticompetitive impact the Commission's treatment of, on the one hand, support for mobile wireless services and, on the other hand, the lack of support for payphones, was having on payphones—leading directly to the removal of payphones as the Commission expanded its universal service support for mobile wireless services.⁵⁸

⁵⁵ The \$48,000,000 figure assumes that all payphones would receive support. Obviously, if some payphones are excluded from support by changes to the proposed rule, the amount of support would be lower. See note 50, *supra*

⁵⁶ E.g., *Payphone Line Support Rulemaking Petition* at 22-23, *APCC PN Reply Comments* at 8-9.

⁵⁷ These issues were raised separately from the issue of the ability of payphones in certain circumstance to be a relatively more efficient way to provide service to low income consumers. See discussion above in Section (A)(2).

⁵⁸ *Payphone Line Support Rulemaking Petition* at 19-23.

The Commission acknowledged that it was aware of these arguments.⁵⁹ Yet the Commission did not address the disparate and anticompetitive impacts resulting from its uneven administration of Section 254.

Competitive neutrality is a bedrock principle of Section 254. From the very *First R&O* implementing Section 254,⁶⁰ the Commission has declared competitive neutrality as a core principle of universal service⁶¹ and stressed the importance of competitive neutrality. The *First R&O* is replete with instances where the Commission recognized its responsibility to implement Section 254 in a competitively neutral manner.⁶² Moreover, the Commission found that “technological neutrality” is part and parcel of competitive neutrality. The Commission stated that “the principle of competitive neutrality in this context should include technological neutrality.”⁶³

Indeed the Commission relied upon the principle of competitive neutrality to impose universal service contribution requirements on PSPs. The Commission stated “[t]hat because payphone aggregators are connected to the PSTN and because they directly compete with mandatory contributors to universal service [referring to the ILECs, who at the time were all

⁵⁹ *Lifeline Order* at ¶393.

⁶⁰ *Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, FCC 97-157 (1997) (hereafter “*First R&O*”)

⁶¹ 12 FCC Rcd 8801-8802, ¶¶ 46-48 (“we establish ‘competitive neutrality’ as [a] . . . principle upon which we base policies for the preservation and advancement of universal service”).

⁶² *E.g.*, 12 FCC Rcd 8968-71, ¶¶ 364-68 (setting the subscriber line charge as the pass through to subscribers by CLECs and other competitive carriers in order to make them eligible for Lifeline); 12 FCC Rcd 8874-76, ¶¶ 170-172 (declaring the location of facilities used to provide service to an area to be irrelevant for purposes of the ETC’s eligibility for Lifeline support); 12 FCC Rcd 8867-68, ¶¶ 164-166 (treating unbundled network elements as facilities in order to make resellers of unbundled network elements eligible for Lifeline).

⁶³ 12 FCC Rcd 8802, ¶ 49 (citations omitted).

competing in the payphone arena] the public interest requires payphone providers to contribute to the support mechanisms.”⁶⁴

The Commission has ruled that the principle of competitive neutrality, including technological neutrality, applies not just to the contribution side, but as well to the support and eligibility side of universal service as well. In adopting the principle of competitive neutrality, the Commission stated that it agreed

with the Joint Board that that an explicit recognition of competitive neutrality in the collection and distribution of funds and *determination of eligibility in universal support mechanisms* is consistent with congressional intent and necessary . . .⁶⁵

At the moment, payphone lines are the only service directly serving low income consumers not receiving some form of Lifeline support. Every other service provider who provides a service for low income consumers—mobile wireless and landline—receives Lifeline support for the line providing the service. In analogous contexts, the Commission has recognized that it contravenes principles of competitive neutrality for there to be one form of providing service that does not have access to universal service support while others do.⁶⁶

Under the Commission’s current universal service rules, support is provided to a direct competitor of the PSPs who uses a different technology. Yet the Commission has not addressed the issue of competitive neutrality as it affects payphones in any of its decisions granting forbearance or waivers to wireless providers to provide Lifeline services. Indeed Lifeline

⁶⁴ 12 FCC Rcd 9184.

⁶⁵ 12 FCC Rcd 8801-02, ¶48 (footnote reference added).

⁶⁶ See, e.g., 12 FCC Rcd 8868, ¶ 168 (declaring resellers of unbundled network elements to be eligible for Lifeline support since otherwise service through unbundled network elements would be the only class of entrants not eligible for Lifeline support).

support is provided to all of the PSPs' competitors who also serve low income consumers but not to PSPs. In this proceeding, APCC pointed out that it is the Commission's practice of providing universal service support to one class of competitors and failure to provide support to payphone line service that is distorting competition and leading to the removal of payphones.⁶⁷ Yet the Commission simply denied relief without addressing this issue, leaving intact a decidedly competitively "unneutral" situation.

In sum, the current situation is in contravention of both competitive neutrality and technological neutrality. The Commission is not free to ignore or depart from the application of its own precedents and established doctrine without a reasoned explanation for the departure.⁶⁸ On this ground alone, the Commission should reconsider its decision denying the *APCC Petitions*.

2. The Section 276 Mandate

In denying the *APCC Petitions*, the Commission stated that it was "not persuaded by APCC that section 276 somehow compels us to use contributions collected pursuant to section 254 to advance the goals of section 276." But APCC did *not* argue that Section 276 "compels" the Commission to use Section 254 contributions to advance Section 276 goals. APCC argued that the Commission could not ignore the fact that its current policies were not effectuating the Commission's Section 276 duty to encourage the deployment of payphones and the Commission could help effectuate its responsibilities for implementing the Section 276 goals by providing universal service support for payphone line services.

⁶⁷ See, e.g., *APCC PN Reply Comments* at 8-9.

⁶⁸ *Motor Vehicles Mfg Assn. v. State Farm Mut. Ins. Co.*, 463 U.S. 29, 57-58 (1983); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (1st Cir. 1969).

Section 276 imposes upon the Commission the responsibility to promote the widespread deployment of payphones. The *Payphone Line Support Rulemaking Petition* explained that the Commission has not succeeded in implementing measures in a manner that has ensured the widespread deployment of payphones. Thus the states, to whom the Commission deferred, failed to develop to any meaningful degree public interest payphone programs under Section 276(b)(2), and in fact there are no such programs in existence. While the Commission has mandated guidelines for the imposition of cost based rates for payphone lines,⁶⁹ the Commission allowed the BOCs to drag their feet in implementing the rates, leading to erosion of the payphone base.⁷⁰ The Commission has developed rules for implementing compensation for PSPs for coinless dial around calls, but in the face of the inadequacy of those rules in the changed environment where the ILECs have abandoned providing their own payphones and call volumes have declined precipitously,⁷¹ there has been no movement to examine or revise the rules despite requests to do so.⁷² In the 14 years of the dial-around compensation program, the Commission has initiated and completed one enforcement action, which it took over 5 years to complete.⁷³

In the meantime, without any attention to the impact on payphones, the Commission has taken a number of actions that not only inhibit or prevent further deployment of payphones but lead to their removal. We have cited here the Commission's action in forbearing and granting

⁶⁹ *Wisconsin Public Service Commission*, 17 FCC Rcd 2051 (2002) ("*NST Order*") (subsequent history omitted).

⁷⁰ See, e.g., *Petition of the Illinois Public Telecommunications Association for Declaratory Ruling*, CC Dkt. No. 96-128 (filed July 30, 2004).

⁷¹ See *Wireline Competition Bureau Announces July 29, 2010 Payphone Dial-Around Compensation Process Workshop*, Public Notice, DA 10-1171 (June 25, 2010).

⁷² *Report of the American Public Communications Council On FCC Payphone Dial-Around Compensation*, submitted on February 9, 2011.

⁷³ *Compass Inc.*, 26 FCC Rcd 9287 (2011).

waivers in multiple instances for wireless providers without in any of those proceedings broaching the subject of the impact of its actions on payphones. Yet the Commission took few or no steps either to expend resources to promote payphone service and indeed took actions, as described above, in contravention of its own bedrock principles of competitive neutrality, to support direct competitors of payphones without any steps to equalize the terms of competition. Now faced with another opportunity to assist deployment, the Commission has embarked on a campaign that will provide more support to the wireless competitors and none to payphone line service.

In sum, despite the Commission actions and sometimes because of the Commission's action or inaction payphones have continued to be removed at an accelerating rate. The Commission must take reasonable steps to ensure it is meeting its mandate under Section 276 and promoting payphone deployment. The fact that payphones used by consumers to make many calls are being removed indicates that more efforts are needed. In light of the continuing statutory mandate in Section 276, and the need for continuing efforts to fulfill it, universal support is the logical vehicle for doing so given the consumers who use payphones, the purposes of Lifeline support, and the relatively low cost of providing support.

III. RULE REVISION

The *Payphone Line Support Rulemaking Petition* had attached to it proposed revisions to the Commission's rules. In light of the amendments to the Commission's rules adopted in the *Lifeline Order* and the proposals in the Commission's Further Notice of Proposed Rulemaking, the rule amendments as contained in the Attachment to the *Payphone Line Support Rulemaking Petition* are no longer applicable. Accordingly revised amendments in track changes format are

attached hereto. The proposed amendments assume the Commission adopts the amount of \$9.25 as the universally applicable amount of Lifeline support.⁷⁴

IV. CONCLUSION

For the foregoing reasons, the Commission should grant this Petition For Partial Reconsideration by granting the *Petition for Interim Relief* and by initiating a rulemaking as requested in the *Payphone Line Support Rulemaking Petition*, subject to the modifications of the proposed rule indicated herein which are adjustments to take account of the Commission's actions in the *Lifeline Order* and *Connect America Fund*.⁷⁵

Respectively Submitted,



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⁷⁴ In the *Payphone Line Support Rulemaking Petition*, APCC proposed redefining low income consumer to include PSPs because it seemed like the most direct route to the result being sought. The Commission seemed to object to this inclusion. We have adhered to that structure in this Reconsideration Petition to preserve the structure of the relief requested in the *Payphone Line Service Rulemaking Petition*. In the rulemaking proceeding APCC is seeking, it may be possible to devise a different efficient route for implementing the results of the rulemaking. Particularly given the structure of the new rules, it may be preferable to write a single, separate section of the rules to address payphone line support rather than trying to fit it in the new rule structure.

⁷⁵ See preceding footnote.

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For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54 – UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart A – General Information

2. Amend § 54.5 by revising the definition of “eligible telecommunications carrier” to read as follows:

§ 54.5 Terms and definitions.

Eligible telecommunications carrier. “Eligible telecommunications carrier” means a carrier designated as such under subpart C of this part.

Subpart B – Services Designated for Support

3. Amend § 54.101 by revising paragraph (a) to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users *provided however that a PSP may require a coin deposit to initiate an unlimited minutes local call*; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

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Subpart C – Carriers Eligible for Universal Service Support

4. Amend § 54.201 by revising paragraphs (a)(1) and (h) to read as follows:

§ 54.201 Definition of eligible telecommunications carriers generally.

(a) ***

(1) Only eligible telecommunications carriers designated under this subpart shall receive universal service support distributed pursuant to part 36 of this chapter, and subparts D and E of this part.

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

5. Revise § 54.202 to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

- (I) (i) Certify that it will comply with the service requirements applicable to the support that it receives.
- (ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant

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shall estimate the area and population that will be served as a result of the improvements.

Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.

(5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans.

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(b) Public Interest Standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.

§ 54.209 [Removed]

6. Section 54.209 is removed.

Subpart E – Universal Service Support for Low-Income Consumers

7. Revise § 54.400 to read as follows:

54.400 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) Qualifying low-income consumer. A “qualifying low-income consumer” is a consumer who meets the qualifications for Lifeline, as specified in § 54.409.

(b) Toll blocking service. “Toll blocking service” is a service provided by an eligible telecommunications carrier that lets subscribers elect not to allow the completion of outgoing toll calls from their telecommunications channel provided however, that PSPs requiring either a coin deposit separate from the coin deposit necessary to initiate a local call or a separate billing arrangement for outgoing toll calls originating from a payphone shall qualify as service meeting the requirements of this subsection.

(c) Toll control service. “Toll control service” is a service provided by an eligible telecommunications

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carrier that allows subscribers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle provided however, that PSPs requiring either a coin deposit separate from the coin deposit necessary to initiate a local call or a separate billing arrangement for outgoing toll calls originating from a payphone shall qualify as service meeting the requirements of this subsection e.

(d) Toll limitation service. “Toll limitation service” denotes either toll blocking service or toll control service for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, “toll limitation service” denotes both toll blocking service and toll control service provided however, that PSPs requiring either a coin deposit separate from the coin deposit necessary to initiate a local call or a separate billing arrangement for outgoing toll calls originating from a payphone shall qualify as service meeting the requirements of this subsection.

(e) Eligible resident of Tribal lands. An “eligible resident of Tribal lands” is a “qualifying low-income consumer,” as defined in paragraph (a) of this section, living on Tribal lands. For purposes of this subpart, “Tribal lands” include any federally recognized Indian tribe’s reservation, pueblo, or colony, including former reservations in Oklahoma; Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688); Indian allotments; Hawaiian Home Lands — areas held in trust for Native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1921, 42 Stat. 108, et. seq., as amended; and any land designated as such by the Commission for purposes of this subpart pursuant to the designation process in § 54.412.

(f) Income. “Income” is all income actually received by all members of a household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran’s benefits, inheritances, alimony, child support payments, worker’s compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid,

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military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(g) Duplicative support. “Duplicative support” exists when a Lifeline subscriber is receiving two or more Lifeline services concurrently or two or more subscribers in a household are receiving Lifeline services or Tribal Link Up support concurrently provided however that a PSP receiving payphone service on more than one line shall not be considered to be receiving duplicative support.

(h) Household. A “household” is any individual or group of individuals who are living together at the same address as one economic unit. A household may include related and unrelated persons. An “economic unit” consists of all adult individuals contributing to and sharing in the income and expenses of a household. An adult is any person eighteen years or older. If an adult has no or minimal income, and lives with someone who provides financial support to him/her, both people shall be considered part of the same household. Children under the age of eighteen living with their parents or guardians are considered to be part of the same household as their parents or guardians.

(i) National Lifeline Accountability Database or Database. The “National Lifeline Accountability Database” or “Database” is an electronic system, with associated functions, processes, policies and procedures, to facilitate the detection and elimination of duplicative support, as directed by the Commission.

(j) Qualifying assistance program. A “qualifying assistance program” means any of the federal, state, or Tribal assistance programs participation in which, pursuant to § 54.409(a) or (b), qualifies a consumer for Lifeline service, including Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program’s free lunch program; Temporary Assistance for Needy Families; Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families (Tribal TANF); Head Start (only those households meeting its income qualifying standard); or the Food

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Distribution Program on Indian Reservations (FDPIR), and with respect to the residents of any particular state, any other program so designated by that state pursuant to § 54.409(a).

8. Revise § 54.401 to read as follows:

§ 54.401 Lifeline defined.

(a) As used in this subpart, Lifeline means a non-transferable retail service offering:

- (1) For which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount described in § 54.403; and
- (2) That provides qualifying low-income consumers with voice telephony service as specified in § 54.101(a). Toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an eligible telecommunications carrier charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers' Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering provided however that this sentence shall not apply to a qualifying low income consumer who is a PSP.

(b) Eligible telecommunications carriers may allow qualifying low-income consumers to apply Lifeline discounts to any residential service plan that includes voice telephony service, including bundled packages of voice and data services; and plans that include optional calling features such as, but not limited to, caller identification, call waiting, voicemail, and three-way calling. Eligible telecommunications carriers may also permit qualifying low-income consumers to apply their Lifeline discount to family shared calling plans.

(c) Eligible telecommunications carriers may not collect a service deposit in order to initiate Lifeline service for plans that:

- (1) Do not charge subscribers additional fees for toll calls; or

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(2) That charge additional fees for toll calls, but the subscriber voluntarily elects toll limitation service

provided however that this subsection shall not apply to ordinary course deposits from PSPs.

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(d) When an eligible telecommunications carrier is designated by a state commission, the state commission shall file or require the eligible telecommunications carrier to file information with the Administrator demonstrating that the carrier's Lifeline plan meets the criteria set forth in this subpart and describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans. Lifeline assistance shall be made available to qualifying low-income consumers as soon as the Administrator certifies that the carrier's Lifeline plan satisfies the criteria set out in this subpart.

(e) Consistent with § 52.33(a)(1)(i)(C), eligible telecommunications carriers may not charge Lifeline customers a monthly number-portability charge.

9. Amend § 54.403 to read as follows:

§ 54.403 Lifeline support amount.

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

(1) Basic support amount. Federal Lifeline support in the amount of \$9.25 per month will be made available to an eligible telecommunications carrier providing Lifeline service to a qualifying low-income consumer, if that carrier certifies to the Administrator that it will pass through the full amount of support to the qualifying low-income consumer and that it has received any non-federal regulatory approvals necessary to implement the rate reduction.

(2) Tribal lands support amount. Additional federal Lifeline support of up to \$25 per month will

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be made available to an eligible telecommunications carrier providing Lifeline service to an eligible resident of Tribal lands, as defined in § 54.400 (e), to the extent that the eligible telecommunications carrier certifies to the Administrator that it will pass through the full Tribal lands support amount to the qualifying eligible resident of Tribal lands and that it has received any non-federal regulatory approvals necessary to implement the required rate reduction.

(b) Application of Lifeline Discount Amount.

(1) Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges must apply federal Lifeline support to waive the federal End User Common Line charges for Lifeline subscribers. Such carriers must apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the carrier has received the non-federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers must apply the federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service or payphone service plan or package offered by such carriers that provides voice telephony service as described in § 54.101, and charge Lifeline subscribers the resulting amount.

(2) Where a subscriber makes only a partial payment to an eligible telecommunications carrier for a bundled service package, the eligible telecommunications carrier must apply the partial payment first to the allocated price of the voice telephony service component of the package and then to the cost of any additional services included in the bundled package.

(c) Toll limitation service. An eligible telecommunications carrier providing toll limitation service voluntarily elected by Lifeline subscribers whose Lifeline plans would otherwise include a fee for placing a toll call that would be in addition to the per month or per billing cycle price of the subscriber's Lifeline service, shall, for April 2012 Lifeline disbursements through December 2013 Lifeline disbursements, receive support in an amount equal to the lesser of:

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- (1) The eligible telecommunications carrier's incremental cost of providing either toll blocking services or toll control services to each Lifeline subscriber who has selected such service; or
- (2) The following amounts for each Lifeline subscriber who has selected toll blocking services or toll control services:

- (i) \$3.00 per month per subscriber during 2012; and
- (ii) \$2.00 per month per subscriber during 2013

provided however that this subsection shall not apply where the service provided is payphone service.

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10. Add § 54.404 to Subpart E to read as follows

§ 54.404 The National Lifeline Accountability Database.

- (a) State certification. An eligible telecommunications carrier operating in a state that provides an approved valid certification to the Commission in accordance with this section is not required to comply with the requirements set forth in paragraphs (b) and (c) of this section with respect to the eligible telecommunications carriers' subscribers in that state. A valid certification must include a statement that the state has a comprehensive system in place to prevent duplicative federal Lifeline support that is at least as robust as the system adopted by the Commission and that incorporates information from all eligible telecommunications carriers receiving low-income support in the state and their subscribers. A valid certification must also describe in detail how the state system functions and for each requirement adopted by the Commission to prevent duplicative support, how the state system performs the equivalent functions. The certification must be submitted to the Commission no later than six months from the effective date of this section of the Commission's rules to be valid. Such certification will be considered approved unless the Wireline Competition Bureau rejects the certification within 90 days of filing.
- (b) The National Lifeline Accountability Database. In order to receive Lifeline support, eligible telecommunications carriers operating in states that have not provided the Commission with approved valid certification pursuant to paragraph (a) of this section must comply with the following requirements:

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(1) All eligible telecommunications carriers must query the National Lifeline Accountability Database to determine whether a prospective subscriber who has executed a certification pursuant to § 54.410(d) is currently receiving a Lifeline service from another eligible telecommunications carrier; and whether anyone else living at the prospective subscriber's residential address is currently receiving a Lifeline service.

(2) If the Database indicates that a prospective subscriber, who is not seeking to port his or her telephone number, is currently receiving a Lifeline service, the eligible telecommunications carrier must not provide and shall not seek or receive Lifeline reimbursement for that subscriber provided however that this provision shall not apply if the prospective subscriber is a PSP seeking to subscribe to payphone service.

(3) If the Database indicates that another individual at the prospective subscriber's residential address is currently receiving a Lifeline service, the eligible telecommunications carrier must not seek and will not receive Lifeline reimbursement for providing service to that prospective subscriber, unless the prospective subscriber has certified, pursuant to § 54.410(d) that to the best of his or her knowledge, no one in his or her household is already receiving a Lifeline service.

(4) An eligible telecommunications carrier is not required to comply with paragraphs (b)(1)-(3) of this section if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Lifeline benefit would not result in duplicative support.

(5) Eligible telecommunications carriers may query the Database only for the purposes provided in paragraphs (b)(1)-(b)(3) of this section, and to determine whether information with respect to its subscribers already in the Database is correct and complete.

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(6) Eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Lifeline subscriber's full name; full residential address; date of birth and the last four digits of the subscriber's social security number or Tribal Identification number, if the subscriber is a member of a Tribal nation and does not have a social security number; the telephone number associated with the Lifeline service; the date on which the Lifeline service was initiated; the date on which the Lifeline service was terminated, if it has been terminated; the amount of support being sought for that subscriber; and the means through which the subscriber qualified for Lifeline provided however that this provision shall not apply if the subscriber is a PSP subscribing to payphone service.

(7) In the event that two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber provided however that this provision shall not apply if the subscriber is a PSP subscribing to payphone service.

(8) All eligible telecommunications carriers must update an existing Lifeline subscriber's information in the Database within ten business days of receiving any change to that information, except as described in paragraph (b)(10) of this section.

(9) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the subscriber's information. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear, easily

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understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Lifeline program, and that failure to provide consent will result in subscriber being denied the Lifeline service.

(10) When an eligible telecommunications carrier de-enrolls a subscriber, it must transmit to the Database the date of Lifeline service de-enrollment within one business day of de-enrollment.

(c) Tribal Link Up and the National Lifeline Accountability Database. In order to receive universal service support reimbursement for Tribal Link Up, eligible telecommunications carriers operating in states that have not provided the Commission with a valid certification pursuant to paragraph (a) of this section, must comply with the following requirements:

- (1) Such eligible telecommunications carriers must query the Database to determine whether a prospective Link Up recipient who has executed a certification pursuant to § 54.410(d) has previously received a Link Up benefit at the residential address provided by the prospective subscriber.
- (2) If the Database indicates that a prospective subscriber has received a Link Up benefit at the residential address provided by the subscriber, the eligible telecommunications provider must not seek Link Up reimbursement for that subscriber.
- (3) An eligible telecommunications carrier is not required to comply with paragraphs (c)(1) through (c)(2) of this section, if it receives notice from a state Lifeline administrator or other state agency that the administrator or other agency has queried the Database about a prospective subscriber and that providing the prospective subscriber with a Link Up benefit would not result in duplicative support or support to a subscriber who had already received Link Up support at that

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residential address.

(4) All eligible telecommunications carriers must transmit to the Database in a format prescribed by the Administrator each new and existing Link Up recipient's full name; residential address; date of birth; and the last four digits of the subscriber's social security number, or Tribal identification number if the subscriber is a member of a Tribal nation and does not have a social security number; the telephone number associated with the Link Up support; and the date of service activation. Where two or more eligible telecommunications carriers transmit the information required by this paragraph to the Database for the same subscriber, only the eligible telecommunications carrier whose information was received and processed by the Database first, as determined by the Administrator, will be entitled to reimbursement from the Fund for that subscriber.

(5) All eligible telecommunications carriers must obtain, from each new and existing subscriber, consent to transmit the information required in paragraph (c) of this section. Prior to obtaining consent, the eligible telecommunications carrier must describe to the subscriber, using clear, easily understood language, the specific information being transmitted, that the information is being transmitted to the Administrator to ensure the proper administration of the Link Up program, and that failure to provide consent will result in the subscriber being denied the Link Up benefit.

11. Revise § 54.405 to read as follows:

§ 54.405 Carrier obligation to offer Lifeline.

All eligible telecommunications carriers must:

- (a) Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers.
- (b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

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(c) Indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term “materials describing the service” includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.

(d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.

(e) De-enrollment.

(1) De-enrollment generally. If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under § 54.409, the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber's monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination, that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements. The carrier must allow a subscriber 30 days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in § 54.410(f). An eligible telecommunications carrier must terminate any subscriber who fails to demonstrate continued eligibility within the 30-day time period. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

(2) De-enrollment for duplicative support. Notwithstanding paragraph (c)(1) of this section,

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upon notification by the Administrator to any eligible telecommunications carrier that a subscriber is receiving Lifeline service from another eligible telecommunications carrier or that more than one member of a subscriber's household is receiving Lifeline service and therefore that the subscriber should be de-enrolled from participation in that carrier's Lifeline program, the eligible telecommunications carrier must de-enroll the subscriber from participation in that carrier's Lifeline program within five business days provided however that this provision shall not apply if the subscriber is a PSP subscribing to payphone service. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(3) De-enrollment for non-usage. Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in § 54.407(c)(2), for 60 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers, an eligible telecommunications carrier must provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage under this paragraph. If the subscriber uses the Lifeline service within 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber's Lifeline service. Eligible telecommunications carriers shall report to the Commission annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the Commission at the time an eligible telecommunications carrier submits its annual certification report pursuant to § 54.416.

(4) De-enrollment for failure to re-certify. Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required

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by § 54.410(f); who fails to provide the annual one-per-household re-certifications as required by § 54.410(f); or who relies on a temporary address and fails to respond to the carrier's address re-certification attempts pursuant to § 54.410(g). Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the subscriber in writing separate from the subscriber's monthly bill, if one is provided using clear, easily understood language, that failure to respond to the re-certification request within 30 days of the date of the request will trigger de-enrollment. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

12. Revise § 54.407 to read as follows:

§ 54.407 Reimbursement for offering Lifeline.

- (a) Universal service support for providing Lifeline shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low-income consumers and payphone lines it serves.
- (b) An eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer and payphone line served. For each qualifying low-income consumer and payphone line receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amounts described in § 54.403(a) and
- (c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's rate for that offering, or similar offerings, subscribed to by consumers who do not qualify for Lifeline.
- (c) An eligible telecommunications carrier offering a Lifeline service that does not require the eligible telecommunications carrier to assess or collect a monthly fee from its subscribers:

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(1) Shall not receive universal service support for a subscriber to such Lifeline service until the subscriber activates the service by whatever means specified by the carrier, such as completing an outbound call; and

(2) After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 60 days, or who have cured their non-usage as provided for in § 54.405(e)(3). Any of these activities, if undertaken by the subscriber will establish “usage” of the Lifeline service:

- (i) Completion of an outbound call;
- (ii) Purchase of minutes from the eligible telecommunications carrier to add to the subscriber’s service plan;
- (iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier’s agent or representative; or
- (iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving the Lifeline service.

(d) In order to receive universal service support reimbursement, an eligible telecommunications carrier must certify, as part of each request for reimbursement, that it is in compliance with all of the rules in this subpart, and, to the extent required under this subpart, has obtained valid certification and re-certification forms from each of the subscribers for whom it is seeking reimbursement.

(e) In order to receive universal service support reimbursement, an eligible telecommunications carrier must keep accurate records of the revenues it forgoes in providing Lifeline services. Such records shall be kept in the form directed by the Administrator and provided to the Administrator at intervals as directed by the Administrator or as provided in this Subpart.

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13. Revise § 54.409 to read as follows:

§ 54.409 Consumer qualification for Lifeline.

(a) To constitute a qualifying low-income consumer:

(1) A consumer's household income as defined in § 54.400(f) must be at or below 135% of the Federal Poverty Guidelines for a household of that size; or

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance (Section 8); Low-Income Home Energy Assistance Program; National School Lunch Program's free lunch program; or Temporary Assistance for Needy Families; or

(3) The consumer must meet eligibility criteria established by a state for its residents, provided that such state-specific criteria are based solely on income or factors directly related to income or

(4) The consumer must be a payphone service provider (PSP), as defined in Section 276 of the Communications Act, who uses a line in the class of service designated for payphone service in the local exchange where the line is being used to provide payphone service.

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(b) A consumer who lives on Tribal lands is eligible for Lifeline service as a "qualifying low-income consumer" as defined by § 54.400(a) and as an "eligible resident of Tribal lands" as defined by § 54.400(e) if that consumer meets the qualifications for Lifeline specified in paragraph (a) of this section or if the consumer, one or more of the consumer's dependents, or the consumer's household participates in one of the following Tribal-specific federal assistance programs: Bureau of Indian Affairs general assistance; Tribally administered Temporary Assistance for Needy Families; Head Start (only those households meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations.

(c) In addition to meeting the qualifications provided in paragraph (a) or (b) of this section, in order to

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constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service provided however that this provision shall not apply to PSPs, and there must not be anyone else in the subscriber's household subscribed to a Lifeline service.

14. Amend § 54.410 to read as follows:

§ 54.410 Subscriber eligibility determination and certification.

(a) All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services.

(b) Initial income-based eligibility determination.

(1) Except where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, when a prospective subscriber seeks to qualify for Lifeline or using the income-based eligibility criteria provided for in § 54.409(a)(1) or (a)(3) an eligible telecommunications carrier:

(i) Must not seek reimbursement for providing Lifeline to a subscriber, unless the carrier has received a certification of eligibility from the prospective subscriber that complies with the requirements set forth in paragraph (d) of this section and has confirmed the subscriber's income-based eligibility using the following procedures:

(A) If an eligible telecommunications carrier can determine a prospective subscriber's income-based eligibility by accessing one or more databases containing information regarding the subscriber's income ("income databases"), the eligible telecommunications carrier must access such income databases and determine whether the prospective subscriber qualifies for Lifeline.

(B) If an eligible telecommunications carrier cannot determine a prospective subscriber's income-based eligibility by accessing income databases, the eligible telecommunications carrier must review documentation that establishes that the prospective subscriber meets

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the income-eligibility criteria set forth in sections 54.409(a)(1) or (a)(3). Acceptable documentation of income eligibility includes the prior year's state, federal, or Tribal tax return; current income statement from an employer or paycheck stub; a Social Security statement of benefits; a Veterans Administration statement of benefits; a retirement/pension statement of benefits; an Unemployment/Workers' Compensation statement of benefit; federal or Tribal notice letter of participation in General Assistance; or a divorce decree, child support award, or other official document containing income information. If the prospective subscriber presents documentation of income that does not cover a full year, such as current pay stubs, the prospective subscriber must present the same type of documentation covering three consecutive months within the previous twelve months.

(ii) Must not retain copies of the documentation of a prospective subscriber's income-based eligibility for Lifeline.

(iii) Must, consistent with § 54.417, keep and maintain accurate records detailing the data source a carrier used to determine a subscriber's eligibility or the documentation a subscriber provided to demonstrate his or her eligibility for Lifeline.

(2) Where a state Lifeline administrator or other state agency is responsible for the initial determination of a subscriber's eligibility, an eligible telecommunications carrier must not seek reimbursement for providing Lifeline service to a subscriber, based on that subscriber's income eligibility, unless the carrier has received from the state Lifeline administrator or other state agency:

(i) Notice that the prospective subscriber meets the income-eligibility criteria set forth in §§ 54.409(a)(1) or (a)(3); and

(ii) A copy of the subscriber's certification that complies with the requirements set forth in paragraph (d)